

Boote 4-5-99

K per Chambers
No letter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

233958



UNITED STATES OF AMERICA

Plaintiff,

v.

C&D Technologies, Inc.
AlliedSignal, Inc. (as
Successor to Prestolite
Batteries, Inc.);
Exide Corporation;
GNB Technologies, Inc. (as
Successor in Interest to
Gould, Inc.);
Johnson Controls, Inc.;
NL Industries, Inc.;

Defendants.

FILED

APR 1 1999

AT 8:30 M
WILLIAM T. WALSH
CLERK

CIVIL ACTION NO.

99-52(WAW)

ENTERED

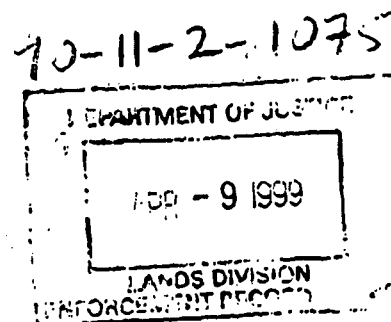
on
THE DOCKET 19 99
on 4-5-99
WILLIAM T. WALSH, CLERK
By
(Deputy Clerk)

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the NL Industries, Inc. Superfund



04/22/89 THU 10:45 FAX 2020102427
DOJ
UNITED STATES DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
Environmental Enforcement Section
By: Richard H. Boote (RB0921)
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-2128

UNITED STATES ATTORNEY
District of New Jersey
By: Susan Cassell (SC8081)
Federal Building, 7th Floor
970 Broad Street
Newark, New Jersey 07102
(973) 645-2847

Attorneys for Plaintiff United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

C&D Technologies, Inc.
AlliedSignal, Inc.(as Successor to Prestolite
Batteries, Inc.);
Exide Corporation;
GNB Technologies, Inc. (as Successor in
Interest to Gould, Inc.);
Johnson Controls, Inc.;
NL Industries, Inc.,

Defendants.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action for injunctive relief and recovery of costs brought pursuant to Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607(a). The United States seeks injunctive relief to remedy an imminent and substantial endangerment to human health and the environment arising out of the release or threatened release of hazardous substances into the environment at a site located in Pedricktown, Salem County, New Jersey known as the NL Industries Inc. Superfund Site (the "Site"). The United States also seeks to recover the unreimbursed response costs it has incurred at the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106, 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district.

THE DEFENDANTS.

4. Defendant AlliedSignal, Inc. (as Successor to Prestolite Batteries, Inc.) ("Allied") is a

corporation whose principal place of business is in Morristown, New Jersey. At times material hereto, Allied was doing business in this judicial district.

5. Defendant C&D Technologies, Inc. ("C&D") is a corporation whose principal place of business is in Blue Bell, PA. At times material hereto, C&D was doing business in this judicial district.

6. Defendant Exide Corporation is a corporation whose principal place of business is Reading, PA. At times material hereto, Exide was doing business in this judicial district.

7. Defendant GNB Technologies, Inc. (as Successor in Interest to Gould, Inc.) ("GNB") is a corporation whose principal place of business is 375 Northridge Road, Atlanta, Georgia. At times material hereto, GNB was doing business in this judicial district.

8. Defendant Johnson Controls, Inc. ("Johnson") is a corporation whose principal place of business is Milwaukee, Wisconsin. At times material hereto, Johnson was doing business in this judicial district.

9. Defendant NL Industries, Inc., ("NL") is a corporation whose principal place of business is Houston, Texas. At times material hereto, NL was doing business in this judicial district.

GENERAL ALLEGATIONS

10. The Site is located on Pennsgrove-Pedricktown Road in Pedricktown, Oldmans Township, Salem County, New Jersey. The Site is an abandoned secondary lead smelting facility, ("Facility") situated on forty-four (44) acres of land. Included among the forty-four (44) acres is a closed 5.6 acre landfill. In 1972, NL Industries, Inc. began recycling lead from spent automotive batteries at the Site. The batteries were drained of sulphuric acid, crushed, and then processed for lead recovery at the smelting facility. The plastic and rubber waste materials resulting from the

04/22/99 THU 16:46 FAX 2026162427
battery-crushing operation were buried in an on-Site landfill, along with slag from the smelting process. NL owned and operated the former Facility.

11. Substances defined as hazardous substances pursuant to Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were detected at the Site in the soil, surface water, groundwater and sediment. These substances included lead arsenic, cadmium, and chromium.

12. Soil, and groundwater, surface water and sediment contaminant migration poses an environmental threat to humans, aquatic life, and animals. The hazardous substances detected at the Site can cause a variety of adverse human health effects. The compounds detected at the Site are toxic and/or carcinogenic. Residual contaminated soils may also pose a threat as a direct source of possible contamination for ground water and surface water at the Site. The potential migration of any such contaminated ground water to drinking water aquifers could present an additional human health risk in the form of ingestion of contaminated drinking water or dermal contact with water used for domestic purposes.

13. In September 1993, the Site was included on the National Priorities List ("NPL") of known or threatened releases of hazardous substances pursuant to a Notice published in the Federal Register. The NPL, codified at 40 CFR Part 300, Appendix B, has been promulgated pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

14. NL ceased operations at the Facility in May 1982. In October 1982, NL entered into an Administrative Consent Order ("ACO") with the New Jersey Department of Environmental Protection ("NJDEP") to conduct a remedial program to address contaminated site soils, paved areas, surface water runoff, the on-site landfill and ground water.

15. In February 1983, National Smelting of New Jersey ("NSNJ") purchased the Site and smelting recommenced. NSNJ ceased operations at the Site in January 1984. In March 1984, NSNJ and its parent, NSR filed for protection under the United States Bankruptcy Code, ultimately liquidating their assets.

16. In April 1986, NL signed an Administrative Order on Consent ("AOC") with EPA and commenced a Remedial Investigation and Feasibility Study ("RI/FS") for Operable Unit Two ("OU2") at the Site. In July 1991, NL completed a Remedial Investigation ("RI") Report and EPA completed a Focused Feasibility Study and published notice of the proposed plan for remedial action for Operable Unit Two. In September 1991, EPA issued a Record of Decision for OU2. The OU2 ROD was modified by a March 1992 Explanation of Significant Differences to provide for the off-site disposal of the slag and lead oxide materials at the Site.

17. In March 1992, EPA issued a Unilateral Administrative Order ("UAO"), requiring thirty-one (31) potentially responsible parties ("PRPs") to implement the OU2 ROD.

18. Pursuant to the 1982 ACO, NL completed its Feasibility Study ("FS") for the remainder of the Site in July 1993 when EPA published notice of the completion of the FS and of the proposed plan for remedial action for Operable Unit One ("OU1"). The OU1 ROD was completed in July 1994.

19. Over a number of years, EPA issued Action Memoranda for phases I-V of the OU1 removal action at the Site. EPA performed most of the removal activities required by these Action Memoranda, including a portion of Phase V of the removal action. In May 1996, six (6) PRPs signed an AOC, which required the PRPs to perform certain Phase V removal activities in addition to the remedial design for OU1. The remedial design for OU1 is expected to be completed in 1999.

20. EPA estimates that the remaining portions of the remedy and Phase V removal action will cost approximately \$21 million plus the cost of EPA's oversight of the work and other related future response costs.

21. Defendants are each a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22. Defendant NL is an owner and/or operator of a facility at which hazardous substances were disposed of within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

23. Defendants, Allied, C&D, Exide, GNB, and Johnson, each arranged for the disposal or treatment, or arranged for a transporter for transport for disposal or treatment, of hazardous substances within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

24. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. There have been and continue to be "releases" or "threatened releases" of "hazardous substances" within the meaning of Sections 101(14) and (22), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and (22), and 9607(a), into the environment at and from the Site.

FIRST CLAIM FOR RELIEF

26. The statements and allegations set forth in paragraphs 1 through 25 are realleged and incorporated herein.

27. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section--

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substance owned or possessed by such person, by any other party or entity, at any facility

. . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

28. The releases or threatened releases of hazardous substances at the Site have caused the United States to incur response costs as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with the Site. The United States is continuing to incur response costs in connection with the Site.

29. The costs of the response actions taken and to be taken by the United States in connection with the Site are not inconsistent with the National Contingency Plan, 40 C.F.R Part 300.

30. Pursuant to Section 107(a), 42 U.S.C. § 9607(a), Defendants are liable to the United States, jointly and severally, for the response costs incurred by the United States in connection with the Site.

31. The United States also is entitled to a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendants are liable to the United States, jointly and severally, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all further response costs incurred by the United States relating to the Site.

SECOND CLAIM FOR RELIEF

32. The statements and allegations set forth in paragraphs 1 through 31 are realleged and incorporated herein.

33. Section 106 of CERCLA, 42 U.S.C. § 9606 provides, in pertinent part, that

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

34. By Executive Order 12580, dated January 23, 1987, the President's authority under Section 106(a) has been delegated to the Administrator of EPA. The Administrator of EPA has re-delegated her functions under Section 106(a) to the Regional Administrators of EPA, including the Regional Administrator of EPA Region II.

35. The Regional Administrator of EPA, Region II, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of the actual and/or threatened releases of hazardous substances at and from the Site.

36. The Defendants are liable to perform the work required to implement the Remedial Actions selected by EPA in order to abate the conditions at the Site that present or may present an imminent and substantial endangerment to the public health or welfare or the environment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Order Defendants, jointly and severally, to reimburse the United States for all response costs incurred and to be incurred by the United States in connection with the NL Industries Inc. Superfund Site;
2. Order Defendants to perform the work required to implement the Remedial Action selected by EPA at the NL Industries Inc. Superfund Site that may present an imminent and substantial endangerment to the public health or welfare or the environment;
3. Award the United States its costs of this action; and
4. Grant such other and further relief as the Court deems appropriate.

Respectfully Submitted,

Date:

2/23/98



LOIS J. SCHIFFER

Assistant Attorney General,
Environment and Natural Resources Division
United States Department of Justice



RICHARD H. BOOTE

Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-2128

FAITH S. HOCHBERG
United States Attorney
District of New Jersey

Date: _____

By: _____
SUSAN CASSELL
Assistant United States Attorney
District of New Jersey
970 Broad Street
Newark, New Jersey 07102
(973) 645-2847

OF COUNSEL:

JANET MCGILLIVRAY
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency -- Region II
290 Broadway
New York, New York 10007-1866